

REMARKS

Claims 1-18 are pending in this application.

By this Amendment, claims 1, 15 and 16 are amended. No new matter is added by this Amendment. Support for the amendments to the claims is found in the original specification, figures and claims. In particular, support for the added feature of "the dispensing head is closed in a sealed manner to prevent the toothpaste from running out of the toothpaste container when the toothpaste container is inserted in the handle part" is found in paragraph [0037] of the description of the present application. Support for the feature that the toothpaste can be squeezed out of the toothpaste container only if the toothpaste container is removed from the handle part is found in paragraph [0048], second sentence, of the description of the present application, and Figs. 2, 7 and 8 (which document that the toothbrush does not provide an outflow channel or empty space allowing the toothpaste to leak from the toothpaste container). By insertion of the word "only" the presently claimed subject matter is clearly different from the subject matter of GB-A-2343619 (Elsender), as discussed more fully below. Support for the phrase "including the handle shell part" which emphasizes that the handle shell part itself maintains essentially its form when subjected to loading during teeth cleaning is supported by the original claims (since the handle shell part forms together with the handle part the surface of the handle and the handle, essentially maintains its form when subjected to loading during teeth cleaning) and in particular by paragraph [0044], first sentence; paragraph [0048], fifth sentence; and paragraph [0052] of the description of the present application.

I. Rejection Under 35 U.S.C. §102(b)

Claims 1-3, 6, 9, 12 and 14-16 are rejected under 35 U.S.C. §102(b) over GB 2343619 (Elsender). This rejection is respectfully traversed.

Elsender discloses a toothbrush (Figs. 11-13) comprising a head covered partially with bristles and a toothbrush body having a neck and a handle whereby the handle is connected to the head via the neck. In the thickened neck, a container holder is integrally formed. In the container holder, a toothpaste container comprising a dispensing head can be inserted such that toothpaste is guided through a channel 2 up to the head of the toothbrush. The toothpaste will enter at the base of the bristles and move upwards to the top of the bristles. The toothpaste container is at least partially covered by a hinged section 12. When the toothpaste container is inserted in the neck by pressing the hinged section in the direction of the toothpaste container, the toothpaste can be squeezed out by flowing through the channel 2.

The toothbrush according to Elsender is different from the present subject matter, as described more fully below, in at least the following three aspects: 1) position of the toothpaste container, 2) application of toothpaste, and 3) the toothpaste container itself.

First, Elsender teaches accommodating the toothpaste container in the thickened neck part of the toothbrush, whereas according to claims 1, 15 and 16 of the present application, the toothpaste container is inserted in the handle part. Since the positions of the toothpaste containers are different and the forces exerted on these different positions by the hand of a user during teeth cleaning are different, the toothbrush of Elsender and the presently claimed toothbrush, toothbrush body and toothbrush container have separate and distinct constructive features, as discussed below.

Second, while Elsender teaches providing the toothpaste to the bristles by pumping the toothpaste from the toothpaste container inserted in the neck via channel 2 to the bristles, claims 1, 15 and 16 recite that the toothpaste can only be applied to the bristles when the toothpaste container is removed from the handle shell part. Elsender and the presently claimed subject matter thus represent different ways to apply toothpaste to the bristles and therefore require different constructive designs. More specifically, Elsender teaches to form

an open connection between the toothpaste container and the head part such that the toothpaste is applied when the toothpaste container is inserted in the neck while the presently claimed application teaches the opposite, namely to close the toothpaste container in a sealed manner when inserted in the handle part and to apply the toothpaste only when the toothpaste container is removed from the handle part. While the Elsender construction allows leaking of toothpaste out of the head part also during the normal cleaning operation, the construction of the presently claimed toothbrush prevents this leaking.

Third, according to Elsender, the toothpaste container (sachet) comprises uniform material properties over its entire body since Elsender does not describe anything else except the end 15, which is open, and does not show any particular structural features which may indicate or suggest a similarity to a handle shell part or a thin walled more flexibly elastic part according to the presently claimed invention.

More specifically, claims 1, 15 and 16 recite that the toothpaste container comprises at least a handle shell part, which is constructed to maintain its form essentially when subjected to loading during teeth cleaning, irrespective of the filing level of the toothpaste container, and a thin walled and more flexibly elastic part such that the toothpaste can be squeezed out of the toothpaste container when the toothpaste container is removed from the handle part. During teeth cleaning, the handle shell part of the toothpaste container absorbs forces exerted by the palm of a user's hand. On the contrary, in the toothbrush according to Elsender, no forces are applied to the sachet (otherwise the toothpaste would be squeezed out completely).

Furthermore, in the toothbrush of claims 1, 15 and 16, the hand of the user is in direct contact with the toothpaste container during teeth cleaning, whereas in the toothbrush according to Elsender, there is no direct contact since the sachet is covered by the hinged section. A hinge-arrangement as described by Elsender is more expensive in its production,

more fragile, less reliable and provides more openings for intrusion of water, bacteria and dirt into the toothbrush and the toothpaste container.

As described above the toothbrush according to Elsender and claims 1, 15 and 16, are different in construction and use. Thus, the toothbrushes according to claims 1, 15 and 16 are not anticipated by Elsender. Furthermore, Elsender fails to disclose, teach or suggest the benefits associated with the presently claimed toothbrush, toothbrush container and toothbrush body, as recited in claims 1, 15 and 16.

Furthermore, Elsender also fails to teach or suggest the additional features of the dependent claims. In particular, in order to facilitate the hinge-function of the hinged section, any hypothetical handle shell part in the toothbrush according to Elsender cannot form an at least step-free surface of the handle (claim 2); the toothpaste container is not constructed to maintain its form independently of the toothpaste volume (claim 3); a closure pin and spike (claims 7-10) is neither suggested nor applicable since in the toothbrush according to Elsender the toothpaste has to be dispensed through channel 2, connecting the toothpaste container and the opening at the head part; and a filling level indicator or cut-out window (claims 11 and 17) of the toothpaste container is not taught or suggested since the toothpaste container is covered by the hinge section.

For the foregoing reasons, claims 1, 15 and 16, as well as the claims dependent therefrom, are not anticipated by Elsender.

Withdrawal of the rejection is thus respectfully requested.

II. Rejections Under 35 U.S.C. §103(a)

Claim 13 is rejected under 35 U.S.C. §103(a) over Elsender; claim 4 is rejected under 35 U.S.C. §103(a) over Elsender in view of U.S. Patent No. 1,701,030 (Collins); claims 7, 8 and 10 are rejected under 35 U.S.C. §103(a) over Elsender in view of U.S. Patent No. 2,450,002 (Jackson); and claims 11, 17 and 18 are rejected under 35 U.S.C. §103(a) over

Elsender in view of U.S. Patent No. 5,382,106 (Voigt). These rejections are respectfully traversed.

Each of claims 4, 7, 8, 10, 11, 13, 17 and 18 depend directly from, or indirectly from, claim 1. Thus each of these claims is allowable for at least the same reason as claim 1 discussed above.

However claims 4, 7, 8, 10, 11, 13, 17 and 18 are also allowable for the additional features they recite.

For example, according to claim 13, the viscosity of the toothpaste is set such that in a vertical position of a longitudinal axis of the toothpaste container, with the outlet opening open and directed downward, little to none of the toothpaste passes out of the opening. In general, toothpaste containers are equipped with a sealing cap. Therefore it is usually not an objective and also not within the scope of routine work of a person skilled in the art to adjust the viscosity according to the above conditions. With reference to paragraphs [0072] and [0073] of the specification, a table of specific viscosity values is disclosed and it is stated that the viscosity is lower than that of conventional toothpastes. However, the Office Action fails to provide support for its assertion that it would have been obvious for one skilled in the art to select a toothpaste viscosity and outlet size in the claimed ranges as the Office Action does not even present known viscosity values.

The Office Action fails to provide motivation as to why one skilled in the art would combine Elsender and Collins as suggested by the Office Action. Since the toothbrushes described in these documents comprise a channel to guide the toothpaste from the toothpaste container to the headpart, a person skilled in the art would not be motivated to modify the toothbrush according to Elsender in view of Collins. However, even if a skilled person could somehow combine both teachings, the presently claimed subject matter still would not be

achieved according to amended claims 1, 15 and 16, since both Elsender and Collins fail to teach or suggest a toothpaste container with the claimed handle shell part.

As mentioned above, Elsender teaches to channel the toothpaste from the open toothpaste container to the head part via a channel guided in the neck and head part. It is contradictory to modify the toothbrush according to Elsender in view of Jackson since Jackson teaches to seal the toothpaste container when the toothpaste container is inserted in the handle part. Thus, one skilled in the art would not be motivated to combine Jackson with Elsender since Elsender teaches away from Jackson.

Furthermore, Voigt discloses a filling level indicator. However, according to the toothbrush of Voigt, the toothbrush provides a mechanism 40 by which the toothpaste container (flexible elongate enclosure 58), accommodated within the compartment 26, can be compressed in order to dispense the toothpaste out of the head part via a passage way 36. A transparent window 72 allows a person to look into the compartment and to estimate the filling level due to the compression state of the toothpaste container. However, the toothpaste container itself has no transparent or translucent part such that a quantity of toothpaste located in the toothpaste container is visible, as claimed in the claims 11 and 17 of the present application. Furthermore, Voigt discloses neither a scale nor a toothpaste container which essentially maintains its form irrespective of the filling level. And again, both Elsender and Voigt do not describe a toothpaste container with a handle shell part as recited in claims 1, 15 and 16. Instead, Elsender and Voigt both disclose a channel for guiding toothpaste from an open toothpaste container to the head of the toothbrush which is obviously contrary to the presently claimed subject matter.

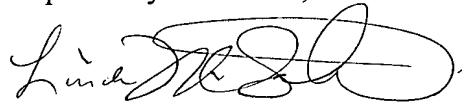
Withdrawal of the rejections is thus respectfully requested.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the pending claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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